

BEFORE THE

**Federal Communications Commission**

WASHINGTON, D.C. 20554

RECEIVED

NOV 1 1993

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In re Applications of )

GAF BROADCASTING COMPANY )

For Renewal of the License )  
of FM Broadcasting Station WNCN )  
New York, New York )

MM Docket No. 93-54

File No. BRH-910201WL

To: The Review Board

**OPPOSITION TO AND MOTION TO STRIKE UNAUTHORIZED APPEAL**

GAF Broadcasting Company, Inc. ("GAF"), the licensee of WNCN(FM), New York, New York, by its attorneys and pursuant to Section 1.302(g) of the FCC rules, herein opposes and moves to strike the baseless, unauthorized and abusive Appeal filed October 18, 1993 by Listeners' Guild, Inc. (the "Guild"). The Guild seeks review of a routine order terminating a comparative renewal hearing, in which it was not a party, after the voluntary dismissal of the only competing applicant. It makes no arguments against that order on the merits. The Guild's naked attempt to delay the effectiveness of WNCN's renewal grant and further harass GAF must therefore be swiftly rejected.

The Guild "appeals" from an order by ALJ Joseph Chachkin terminating a comparative renewal proceeding between GAF and one competing applicant, Class Entertainment And Communications L.P. ("Class"). No basic qualifying issues had been specified against either. After Class requested voluntary dismissal, Judge Chachkin

No. of Copies rec'd  
List A B C D E

OJH

dismissed its application, terminated the proceeding, and granted GAF's application subject to the FCC's review of its EEO record, as directed by the Hearing Designation Order in this proceeding.<sup>1</sup>

The Guild has no standing whatsoever to bring this appeal. As even it concedes, Section 1.302(a) of the FCC rules authorizes only parties to a comparative proceeding to appeal a presiding officer's ruling which terminates that proceeding. The Judge, Review Board, Mass Media Bureau and full Commission have all denied the Guild's assorted issue requests and unanimously concurred that it is not entitled to be a party to this proceeding.<sup>2</sup> The Guild's sole avenue for appeal was pursuant to Section 1.301(a)(1) of the FCC rules, which it did in fact exercise, unsuccessfully, after the Judge denied its first intervention request.

The Guild does not even challenge the merits of the order terminating the comparative hearing, nor could it. The competing applicant that challenged WNCN decided not to pursue the frequency.<sup>3</sup> Although the Guild claims to have filed simply "as a protective measure" to

---

<sup>1</sup>Memorandum Opinion and Order, FCC 93M-593, ALJ Chachkin, released September 17, 1993.

<sup>2</sup>Hearing Designation Order, 8 FCC Rcd 1742 (ASD 1993); Memorandum Opinion and Order, FCC 93-385, released August 16, 1993; Memorandum Opinion and Order FCC 93M-360, ALJ Chachkin, released June 15, 1993; Memorandum Opinion and Order, FCC 93R-50, Rev. Bd, released September 13, 1993. These decisions mirror those arising from GAF's 1981 renewal application, when the Presiding Judge, Review Board, Commission and U.S. Court of Appeals all rejected the Guild's attempt to intervene in the comparative renewal proceeding. See Listeners' Guild Inc. v. FCC, 813 F.2d 465 (D.C. Cir. 1987).

<sup>3</sup>The Guild claims that FCC orders and "actions by various parties" have "eliminate[d] all competing applications to GAF's renewal application." But the FCC has not "eliminated" any challenger. This proceeding was terminated when the last remaining applicant requested voluntary dismissal. Before that, the Presiding Judge dismissed the application filed by the  
(continued...)

preserve its right with respect to other appeals, it is clear that there is no need for it to do so. Should a higher authority grant one of its numerous unsuccessful issues requests, a hearing could always be commenced if necessary, with no ongoing "comparative" hearing (without any competing applicant) necessary as a prerequisite. Indeed, the Guild has already filed every permissible appeal possible, prior to this unauthorized one! At the present, it has two appeals pending before the U.S. Court of Appeals for the D.C. Circuit (and has threatened more), one before the Commission and the present appeal to the Review Board. Nor do the FCC rules allow the Guild to appeal this order simply because it believes other orders, already on appeal, were erroneous.<sup>4</sup> As the Mass Media Bureau has aptly recognized, the Guild has been "beating a dead horse" by filing "seriatim pleadings containing essentially the same arguments which have been considered."

On the contrary, the purpose of the Guild's unauthorized appeal seems clear -- to delay the effectiveness of the WNCN renewal grant, and yet again misuse the FCC processes to harass GAF. By now the Commission is all too familiar with the Guild, which has buried the licensees of GAF, the Commission and the courts with an avalanche of petitions and appeals over nearly 20 years. This is the third time that the Guild has unsuccessfully challenged the renewal of WNCN. Had the Guild been a party, Section 1.302(b) would have

---

<sup>3</sup>(...continued)

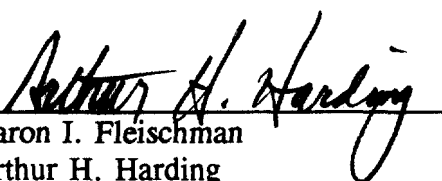
Guild's former leader, T'ing Pei, after Pei failed to prosecute that application. Pei's application represented the second consecutive WNCN renewal cycle where the Guild's leader resigned to file a competing application for the WNCN frequency at renewal time, while the Guild itself filed a petition to deny.

<sup>4</sup>To the extent the Guild's 12 pleadings listed in Attachment A are incorporated by reference, GAF requests that its oppositions, those of the Mass Media Bureau, and the ALJ, Review Board and FCC decisions denying those pleadings also be incorporated by reference.

provided an automatic stay of GAF's renewal grant. Because it is not a party, and no actual party has filed an appeal, this provision is inapplicable. The Guild's unauthorized, meritless and abusive appeal should be immediately stricken or summarily dismissed.

Respectfully submitted,

GAF BROADCASTING COMPANY,  
INC.

  
\_\_\_\_\_  
Aaron I. Fleischman  
Arthur H. Harding  
Christopher G. Wood

Its Attorneys

Fleischman and Walsh  
1400 Sixteenth St., N.W.  
Suite 600  
Washington, D.C. 20036

DATED: November 1, 1993

## CERTIFICATE OF SERVICE

I, Eve J. Lehman, a secretary at the law firm Fleischman and Walsh, hereby certify that I have this 2nd day of November, 1993 placed a copy of the foregoing "Opposition To Unauthorized Appeal And Motion To Strike" in U.S. First Class Mail, addressed to the following:

\*Joseph A. Marino, Chairman  
Review Board  
Federal Communications Commission  
2000 L Street, N.W.  
Room 211  
Washington, D.C. 20554

\*Mr. Norman B. Blumenthal  
Review Board  
Federal Communications Commission  
2000 L Street, N.W.  
Room 207  
Washington, D.C. 20554

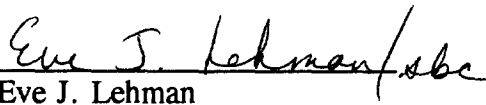
\*Ms. Marjorie R. Greene  
Review Board  
Federal Communications Commission  
2000 L Street, N.W.  
Room 204  
Washington, D.C. 20554

Mr. Glenn A. Wolfe  
Chief, EEO Branch  
Mass Media Bureau  
Federal Communications  
Commission  
2025 M Street, N.W., Room 7218  
Washington, D.C. 20554

\*Mr. Gary Schonman, Esquire  
Hearing Branch  
Mass Media Bureau  
2025 M Street, N.W., Room 7212  
Washington, D.C. 20554

Morton Berfield, Esquire  
Cohen & Berfield  
1129 20th Street, N.W.  
Washington, D.C. 20036

David M. Rice, Esquire  
One Old Country Road  
Suite 400  
Carle Place, New York 11514

  
Eve J. Lehman

\* By hand